

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CHRISTOPHER C. DAVIDSON,
Plaintiff,

vs.

DEUTSCHE BANK SECURITIES, INC.,
DEUTSCHE BANK AMERICAS
HOLDING CORPORATION, and
DEUTSCHE BANK AMERICAS
SEVERANCE PAY PLAN,

Defendants

Civil Action No. 1:04-cv-11027-RGS

**DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
(WITHOUT OBJECTION)**

Defendants hereby request leave to file their Reply to Plaintiff's Opposition to Motion to Dismiss the complaint.

DISCUSSION

In response to defendants' Motion to Dismiss plaintiff's complaint, plaintiff has filed an opposition in which he relies, among other things, on assertions and theories that are not raised in the complaint. For example, although plaintiff has not filed an amended complaint, he purports to rely on a new theory of promissory estoppel to support his contract claim; he asks for leave to file a state-law claim under *Fortune v. National Cash Register*, 373 Mass. 96, 364 N.E.2d 1251 (1977), as a purported "alternative" argument to his defective ERISA claim; and he now seeks to support his untenable claim for declaratory judgment by asking the court to make a declaration on grounds that are not

asserted in the complaint. Additionally, plaintiff has filed an affidavit and has attached to his opposition materials that are not referenced in his Complaint.

Defendants should be allowed the opportunity to file their reply to address plaintiff's new assertions and submissions and to help the Court in determining the motion to dismiss.

Plaintiff's counsel has no objection to the defendants' request to file their reply memorandum.

Accordingly, Defendants respectfully request that the Court grant them leave to file their reply.

DEUTSCHE BANK SECURITIES, INC.,
DEUTSCHE BANK AMERICAS HOLDING
CORPORATION, AND DEUTSCHE
BANK AMERICAS SEVERANCE PAY
PLAN,

By their attorneys,

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Dated: September 20, 2004